



9-30-05

PTO/SB/64 (07-05)

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U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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DAE  
JW**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT  
ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)**Docket Number (Optional)  
05-09-2569

First named inventor: DENG, David

Application No.: 10/608,260

Art Unit: 3742

Filed: 06/27/2003

Examiner: JEFFREY, John A.

Title: Fireplace

Attention: Office of Petitions

**Mail Stop Petition**

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

FAX (571) 273-8300

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (571) 272-3282.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the office notice or action plus an extensions of time actually obtained.

**APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION**

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee - required for all utility and plant applications filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional.

## 1. Petition fee

 Small entity-fee \$ 750.00 (37 CFR 1.17(m)). Applicant claims small entity status. See 37 CFR 1.27. Other than small entity – fee \$ \_\_\_\_\_ (37 CFR 1.17(m))

## 2. Reply and/or fee

- A. The reply and/or fee to the above-noted Office action in the form of Response to Office Action Dated March 29, 2004 (identify type of reply):

has been filed previously on \_\_\_\_\_.  
 is enclosed herewith.

- B. The issue fee and publication fee (if applicable) of \$ \_\_\_\_\_.  
 has been paid previously on \_\_\_\_\_.  
 is enclosed herewith.

[Page 1 of 2]

This collection of information is required by 37 CFR 1.137(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.



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750.00 OP

## 3. Terminal disclaimer with disclaimer fee

Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.

A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ \_\_\_\_\_ for a small entity or \$ \_\_\_\_\_ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

## 4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D)).]

**WARNING:** Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

Signature

Date

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Dylan C. Dang

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Typed or printed name

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55,797

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Registration Number, if applicable

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9250 Wilshire Blvd., Suite 325, Beverly Hills, CA 90212

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Address

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310-777-8399

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Telephone Number

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Address
Enclosures:  Fee Payment Reply Terminal Disclaimer Form Additional sheets containing statements establishing unintentional delay Other: \_\_\_\_\_

## CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]

I hereby certify that this correspondence is being:

Deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450.

Transmitted by facsimile on the date shown below to the United States Patent and Trademark Office as (571) 273-8300.

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9/29/05

Date

Signature

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Dylan Dang

Typed or printed name of person signing certificate



## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Re Application of: **David Deng**

Application No. 10/608,260

Filing Date: 06/27/2003

Title: Fireplace

Examiner: Jeffery, John A.

Art Unit: 3742

Attorney Docket No. 05-09-2569

### **STATEMENT OF PETITION TO REVIVE UNDER 37 C.R.F. 1.137(b)**

Attention: Office of Petitions  
Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450  
Fax (703) 872-9306

Dear Sir/Madam:

The above-identified application became abandoned for failure to file a timely and proper reply to a notice of abandonment issued by the United States Patent and Trademark Office on December 28, 2004. Pursuant to 37 C.F.R. 1.137(b), Applicant hereby respectfully submits the following statement.

A non-final Office Action was issued on March 29, 2004, which informed that the application was in condition for allowance except for a number of formal matters. In particular, all claims were allowed notwithstanding objections as to formalities. However, Applicant was never informed of this Office Action by Applicant's former prosecution counsel of record. In fact, Applicant did not learn that this application (and others) had been permitted to go abandoned by the former prosecution counsel until after Applicant substituted new counsel in late September 2005. More specifically, former prosecution counsel never responded to inquiries regarding the patent application. Nor did former prosecution counsel ever forward the Office Action (or any other communications from the PTO) to Applicant. It is to be noted that

Applicant, who is primarily engaged in business in Asia, entrusted the prosecution of his patent application(s) in the United States to the former prosecution counsel. However, despite Applicant's diligent requests to be kept informed as to the status of this and other applications, former prosecution counsel failed to communicate with Applicant regarding the prosecution of this and other applications.

Because former prosecution counsel failed to maintain communication on any patent matters, Applicant met preliminarily with present counsel on September 20, 2005 to discuss retainer of new counsel for Applicant's patent portfolio. Immediately subsequent to this meeting, present counsel began investigating the status of Applicant's patent portfolio, including the instant application. Of the files that were available for inspection on the PTO's database online, present counsel was able to inform Applicant of the abandonment of the instant application on or about September 21, 2005. Thus, Applicant was not aware that this (and other) application(s) had been abandoned until informed by new counsel on or about September 21. Upon learning of the status of this application, Applicant formally retained new counsel on September 27, 2005 and promptly instructed new counsel to take immediate remedial measures.

The entire delay in filing the required reply from the due date for the reply until the filing of this petition was unintentional. Because the failure to reply to the Office Action was unintentional, and because Applicant was not aware of the subsequent abandonment until about September 21, 2005, Applicant respectfully requests that this petition be accepted.

Respectfully submitted,

Trojan Law Offices  
By

  
\_\_\_\_\_  
Dylan C. Dang  
Reg. No. 55,797

September 29, 2005